

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Implementation of Section 621(a)(1) of the)	
Cable Communications Policy Act)	
of 1984 as amended by the Cable)	MB Docket No. 05-311
Television Consumer Protection and)	
Competition Act of 1992 on Antenna)	
)	

COMMENTS OF THE ALLIANCE FOR PUBLIC TECHNOLOGY

The Alliance for Public Technology (“APT”) appreciates the opportunity to submit these comments in the above-captioned proceeding concerning the Commission’s implementation of Section 621(a)(1) of the Communications Act of 1934, as amended.¹ APT is a nonprofit organization of public interest groups and individuals, working together to foster broad access to affordable, usable information and communications services and technology, for the purpose of bringing better and more affordable health care to all citizens, expanding educational opportunities for lifelong learning, enabling people with disabilities to be independent and productive members of our society, creating opportunities for jobs and economic advancement, making government more responsive to all citizens and simplifying access to communications technology.

¹ “. . . a franchising authority. . . may not unreasonably refuse to award an additional competitive franchise.” 47 U.S.C. § 541(a)(1).

As the Commission notes, this proceeding addresses two important interrelated federal policy goals: the enhancement of competition in the provision of cable services, and rapid deployment of broadband. Video services offered by new or upgraded networks will do much more than bring additional competition to the video programming marketplace, with the prospect of greater choice and lower prices. More importantly, the revenues from such video offerings can help network operators recover the billions of dollars of capital they need to build the high-speed connections that will be essential to economic growth, better education, improved health care, millions of new jobs, and full participation by U.S. citizens in 21st century society. Without the capacity afforded by technologies that assure true broadband capacities into and out of homes, it will not be possible to have affordable interactive services for essential applications like remote home-doctor consultations, interactive collaboration among remote tele-workers and full and equal access to services and technologies by people with disabilities. Thus, it is imperative that the competitive franchising process does not directly or indirectly impede video competition and consumer choice.

APT supports efforts to streamline the Title VI franchise process, in order to speed the deployment of broadband facilities to all regions of the nation. There should be parity of regulation for those who offer cable programming over broadband networks, regardless of the specific technology utilized by the network. Such regulations must include: 1) strong consumer protections provisions and service quality standards; 2) preservation of local government

entities' authority over local rights of way; and, 3) access for public, educational and governmental channels. Finally, the fiscal interests of franchising authorities should be protected by requiring providers of cable programming over IP networks to pay franchise fees that are equivalent to those imposed on traditional Title VI cable systems.

While it appears that legislative changes would be needed to effectuate the franchise reform policies that APT supports, until Congress acts², there are affirmative steps the FCC can take to improve the franchising process for new entrants to the cable programming marketplace that utilize broadband networks. For example, the FCC could establish guidelines concerning a reasonable period of time for franchising authorities to consider applications for competitive franchises. If a franchise authority exceeds this time period, its failure to act would be presumed to be an “unreasonable” refusal to award a competitive franchise under Section 621(a)(1) of the Act, unless the franchise authority rebuts this presumption by demonstrating to the Commission why it requires more time to make a determination.

Six months appears to be a reasonable time period for franchise authority review of competitive applications, although the Commission may want to establish a shorter period in the case of franchise applications by local network operators that already have authorizations to use public rights of way. For example, in the analogous situation of renewals of existing franchises, Congress established a four month period during which a franchising authority must

² A number of proposals to revise the franchising process are currently under consideration in the 109th Congress, including S. 1349, the Video Choice Act of 2005, introduced by Senator Smith (R-OR).

renew a franchise or issue a preliminary assessment that it should not be renewed, subject to further administrative proceedings.³

As the Commission's NPRM suggests, the Commission's authority to establish such guidelines for awards of competitive franchises is consistent with its overall role in implementing the administration of Title VI of the Act. In addition, its authority to take such action derives from Section 706 of the Act, which directs the Commission to ". . . encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity . . . measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."⁴

Conclusion

While Congressional action is needed to substantially reform the franchising process in response to the marketplace changes wrought by the delivery of cable services and other video programming via broadband networks, nonetheless, the FCC can improve the franchising process by setting guidelines that establish a reasonable time period for the consideration of applications for competitive franchises. This important step not only will increase consumer choice in video programming, but also promote the more rapid deployment of high-speed broadband networks throughout our nation.

³ 47 U.S.C. § 546 (c)(1).

⁴ 47 U.S.C. § 157 nt.

February 13, 2006

Respectfully Submitted:

Daniel B. Phythyon
Public Policy Director

Alliance for Public Technology
919 18th Street
Suite 900
Washington, DC 20006